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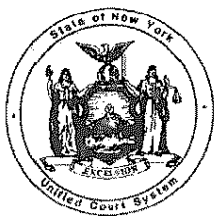
From: Lisa Johnson

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Subject: Landmarks Society v. Planning Board of City of Utica

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STATE OF NEW YORK
SUPREME COURT CHAMBERS
ONEIDA COUNTY COURTHOUSE
302 NORTH JAMES STREET
ROME, NEW YORK 13440

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Website for Part Rules: www.nycourts.gov/courts/5jd/rules.shtml

HON. PATRICK F. MACRAE
Justice of the Supreme Court

Senta B. Siuda
Principal Law Clerk

Lisa Johnson
Secretary

January 21, 2020

VIA FACSIMILE & REGULAR MAIL

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Re: Landmarks Society of Greater Utica, et al. v. Planning Board of the City of Utica, et al.

Index No.: CA2020-000182

RJI No.: 32-20-0054

LETTER ORDER

Dear Counselors:

The Court has received a proposed Order to Show Cause for a change of venue in the above matter. For the reasons stated, the Court declines to address the motion without prejudice to the motion being brought in the court where the matter is presently pending.

As set forth in Ms. Hartnett's Affirmation, she timely demanded transfer of this matter from Albany County to Oneida County. However, opposing counsel also timely served opposing affidavits and an opposing affirmation of counsel.

Kathryn Hartnett, Esq.
Thomas S. West, Esq.
Kathleen M. Bennett, Esq.

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January 21, 2020

The affidavits and affirmation contain both factual averments and arguments of law. As such, this Court cannot treat the responses as “mere piece[s] of paper” and allow the motion to be made in the transferee county. *See Payne v. Civil Service Employees Association*, 15 AD2d 265 (3rd Dept, 1961). Preliminary judicial scrutiny of the accuracy of the affidavits and affirmation is impermissible. “The mere filing of . . . an affidavit mandates that the motion . . . be made in the Judicial District in which the action was brought. *Ludlow v. S.S. Silberblatt, Inc.*, 14 AD2d 291 (1st Dept, 1961); *Quinn v. Stuart Lakes Club, Inc.*, 53 AD2d 775 (3rd Dept, 1976); *McKinney’s Consolidated Laws of New York, CPLR 511, Commentary C511:3*.

IT IS SO ORDERED:



Hon. Patrick F. MacRae
Justice of the Supreme Court

PFM/lhj